



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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JUL 30 2015

Gary J. Brower, Esq.
New Jersey Department of Environmental Protection
Office of Legal Affairs
401 East State Street, 7th Floor
Trenton, NJ 08625-0402

Dear Mr. Brower:

On behalf of the US Environmental Protection Agency Region 2, thank you for the opportunity to provide comments on the proposed changes to the Coastal Zone Management rules, Stormwater Management rules and the Flood Hazard Area Control Act rules.

While EPA appreciates the importance of increasing consistency among regulatory requirements, measurable changes to Category 1 (C1) waters as a result of proposed changes to these rules would not comply with New Jersey's water quality standards. C1 waters have exceptional ecological significance, exceptional recreational significance, exceptional water supply significance or exceptional fisheries resources. Changes to these regulations that result in a less stringent condition in New Jersey's Pollutant Discharge Elimination System (NJPDES) permit(s), will also be inconsistent with EPA's National Pollutant Discharge Elimination System (NPDES) permitting regulations.

The Clean Water Act requires water quality standards to be established and implemented by states and that they must include anti-degradation policies to maintain and protect high quality state waters from increased loadings of pollutants resulting from regulated activities. New Jersey's anti-degradation policies for C1 waters in N.J.A.C. 7:9B-1.5(d)2.iii require that they "shall be protected from any measurable changes (including calculable or predicted changes) to the existing water quality. Water quality characteristics that are generally worse than the water quality criteria, except as due to natural conditions, shall be improved to maintain or provide for the designated uses where this can be accomplished without adverse impacts on organisms, communities, or ecosystems of concern." If measurable changes to the existing water quality of C1 waters results from the proposed changes to these rules, this would not comply with New Jersey's water quality standards.


NJDEP's summary of the proposed changes notes that while the Stormwater Management rules prohibit new development in the Special Water Resource Protection Areas, the Flood Hazard Area Control Act rules "recognize that development within the riparian zones is sometimes unavoidable, and therefore establishes requirements necessary to ensure that disturbance to riparian zone vegetation is avoided where feasible, minimized to the extent practicable, and, where disturbance to riparian zone vegetation would adversely impact the environment, appropriate compensation is provided in order to ensure the continued preservation and/or improvement of riparian zone functionality." In addition, while the currently effective Stormwater Management rules completely prohibit stormwater discharges and other structures from being located within the any portion of the Special Water Resource Protection Areas, under the new rules, discharges may be permitted in the 300 foot zone if the applicant can show that stormwater discharges outside the riparian zone would likely result in greater erosion or other adverse environmental impacts. EPA is concerned that additional development and discharges to surface waters

in riparian zones could negatively impact surface water quality, in spite of efforts to reduce impacts on vegetation and riparian zone functionality.

Section 402 of the Clean Water Act established the National Pollutant Discharge Elimination System (NPDES) program and allows EPA to authorize states to implement NPDES permit programs. On April 13, 1982, EPA authorized New Jersey to implement such a program. EPA's NPDES permitting regulations at 122.44(l), which are applicable to state NPDES programs, require permits, when renewed or reissued, to include interim effluent limitations, standards or conditions at least as stringent as the final effluent limitations, standards or conditions in the previous permit. New Jersey's Municipal Separate Storm Sewer System (MS4) permits cross-reference the state's SWM rules and require compliance with those rules. If changes to the Stormwater Management rules result in a less stringent permit condition, this would constitute backsliding in violation of EPA's permit regulations. EPA recommends that fact sheets for the NJPDES MS4 permits affected by these changes clearly detail how these rule revisions maintain the same level of stringency and do not result in backsliding.

EPA would like to discuss the potential impacts of these proposed changes, especially given that NJDEP is in the process of drafting new MS4 general permits that will reference these rules. Kate Anderson, Chief of the Clean Water Regulatory Branch, will contact your stormwater management program managers to schedule a meeting. Please contact her directly at 212-637-3754 or at Anderson.Kate@epa.gov if you have in questions in the meantime. Thank you.

Sincerely,


Joan Matthews
Director, Clean Water Division

cc: Michelle Putnam